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OFFICE OF PETITIONS

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In re Patent No. 7,579,439	: DECISION ON REQUEST
Issued: August 25, 2009	: FOR RECONSIDERATION
Application No. 10/749,699	: OF PATENT TERM ADJUSTMENT
Filed: December 30, 2003	: AND
Attorney Docket No. 13985-0057002	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)" filed October 26, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from 120 days to 320 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred eighteen (318) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on December 30, 2006 and ends on March 2, 2008, the day before the RCE was filed, the B delay is 427 (not 429) days. See 35 U.S.C. 154(b)(1)(B)(i). Further, a Notice of Appeal was filed August 1, 2007, thus 215 days of the over three year period consumed by appellate review, beginning August 1, 2007 and ending on March 2, 2008, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). As such, the patent term adjustment is 318 days (415 + 427 minus 215 minus 309 days applicant delay), not 320 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) paid with the petition filed October 26, 2009. No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating

that the term of the above-identified patent is extended or adjusted by **three hundred eighteen (318)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

A handwritten signature in black ink, appearing to read 'Anthony Knight', with a stylized flourish at the end.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,579,439 B2
DATED : August 25, 2009
INVENTOR(S) : Terry B. Strom

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (120) days

Delete the phrase "by 120 days" and insert – by 318 days--